

### **Florida 404 Talking Points**

- Historic approval of Florida's request to administer the Clean Water Act Section 404 Program
- Announcing the decision to approve Florida's request on Thursday, December 17 at a press conference with Florida Department of Environmental Protection (DEP) Secretary Noah Valenstein, U.S. Department of the Interior Secretary David Bernhardt, White House Council on Environmental Quality Chair Mary Neumayr, U.S. Congressmen Mario Diaz-Balart (FL-25), Gus Bilirakis (FL-12), Dan Webster (FL-11), John Rutherford (FL-04), Michael Waltz (FL-06), and Greg Steube (FL-17), EPA Assistant Administrator for Water Dave Ross, Principal Deputy Assistant Secretary of the Army for Civil Works Ryan Fisher, and EPA Regional Administrator Mary Walker.
- This decision represents an intensive effort requiring coordination with four other federal agencies, three state agencies, and eight tribal governments.
- In the 43 years since the CWA was amended to provide for state or tribal assumption, only two states, prior to today's decision, have assumed administration of the CWA Section 404 program (Michigan and New Jersey).
  - Florida is the first state to receive approval to administer a CWA 404 program in over 25 years.
- Process:
  - On August 5, 2020, EPA Region 4 Administrator Mary S. Walker and Noah Valenstein, Secretary of the Florida DEP, signed a Memorandum of Agreement (MOA) as part of the assumption process.
  - On August 20, 2020, Governor Ron DeSantis submitted a request for EPA to conduct a review and approve Florida's program to assume administration of the CWA 404 program.
  - EPA solicited public review and comment on Florida's proposal to administer a Section 404 program as well as soliciting public comment and consulting under Section 106 of the National Historic Preservation Act (NHPA).
  - EPA also held virtual public hearings, during which EPA accepted comments regarding Florida's request and regarding potential effects on historic properties pursuant to Section 106 of NHPA.
- Endangered Species Act
  - Part of the review process included the development of a comprehensive Biological Evaluation that ensures protection of more than 200 endangered species throughout Florida, and completed consultation under the Endangered Species act, which is the first and only time the Agency has ever completed such consultation under Section 404(g) of the CWA.
  - EPA also developed a Programmatic Agreement with multiple parties which enabled the Agency to complete NHPA consultation for the first time ever under Section 404(g) of the CWA.
- Florida's submission, which EPA determined to be complete, included the MOA and other required elements which EPA considered in determining that Florida's program met the standards established under Section 404 of the CWA and implementing regulations.

About Section 404

- Section 404 of the CWA requires a permit before dredged or fill material may be discharged into waters of the United States. Section 404(g) of the CWA gives states and tribes the option of assuming, or taking over, the permitting responsibility and administration of the Section 404 permit program for certain waters.
- Section 404 permits for those assumed waters would be issued by the state or tribe instead of the U.S. Army Corps of Engineers. The CWA provides that the Corps retains permitting authority in certain tidal waters and other specified waters currently related to the transport of interstate or foreign commerce.